

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q79183

Ulrich SINN

Appln. No.: 10/788,471

Group Art Unit: 2618

Confirmation No.: 7558

Examiner: Wen Wu HUANG

Filed: March 1, 2004

For: METHOD FOR TRANSMITTING SAFETY RELATED DATA

SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The USPTO is directed and authorized to charge the statutory fee of \$510.00 and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,



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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: February 29, 2008

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is SIEMENS AKTIENGESELLSCHAFT by virtue of an assignment executed by Ulrich SINN (hereinafter “Appellant”) on May 7, 2004 and recorded in the U.S. Patent and Trademark Office on July 12, 2004 at Reel 015559 and Frame 0584.

II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, there are no other prior or pending appeals, interferences or judicial proceedings known to Appellant's Representative or the Assignee that may be related to, be directly affected by, or have a bearing on the Board's decision in the Appeal.

III. STATUS OF CLAIMS

Claims 1-15 are pending and are the basis of this Appeal.

Claim 1-15 stand rejected. See Claim Appendix for claims.

IV. STATUS OF AMENDMENTS

In the November 13, 2007 Advisory Action, the Examiner indicated that the claim Amendments set forth in the October 12, 2007 Amendment were entered for purposes of appeal. Therefore, all amendments to the claims, which have been made during prosecution of the present application, have been entered for purposes of appeal and are reflected in the Claim Appendix.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is directed to a method for transmitting information data between a mobile radio transmitter and a radio receiver of a machine or plant. The method features of independent claims 1, 14 and 15 are described herein in reference to non-limiting embodiments of Appellant's specification.

Claim 1 - Claim 1 recites a method for transmitting information data between a mobile radio transmitter 1 and a radio receiver 3 of a machine or plant 4 (Fig. 1). A first radio link 6 is provided between the radio transmitter 1 and the radio receiver 3 for transmitting safety related information data (Fig. 2; para. [0020]). A second radio link 7 is provided between the radio transmitter 1 and the radio receiver 3 for transmitting non-safety related information data (Fig. 2; para. [0020]). Furthermore, the first radio link 6 and the second radio link 7 are two physical channels that contemporaneously transmit the information data in parallel (para. [0016]).

Claim 14 - Claim 14 recites a radio transmitter 1 configured to transmit data to a radio receiver 3 of a machine or plant 4 (Fig. 1). The radio transmitter 1 has a first radio link 6 for transmitting safety related information and a second radio link 7 for transmitting non-safety related information (Fig. 2; para. [0020]). The first radio link 6 and the second radio link 7 are two physical channels that contemporaneously transmit the information data in parallel (para. [0016]).

Claim 15 - Claim 15 recites a radio receiver 3 of a machine or plant 4, configured to receive data from a radio transmitter 1 (Fig. 1). The radio receiver 3 has a first radio link 6 for

receiving safety related information, and a second radio link 7 for receiving non-safety related information (Fig. 2; para. [0020]). The first radio link 6 and the second radio link 7 are two physical channels that contemporaneously transmit the information data in parallel (para. [0016]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A.** Claims 1, 14 and 15 stand rejected under 35 U.S.C. § 112, first paragraph,
- B.** Claims 1-4, 9-12, 14 and 15 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,073,083 to Litwin Jr., et al. (“Litwin”),
- C.** Claims 5-8 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable in view of Litwin and U.S. Patent No. 6,893,395 to Kraus et al. (“Kraus”), and
- D.** Claim 13 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable in view of Litwin and U.S. Patent No. 7,103,344 to Menard (“Menard”).

VII. ARGUMENT

I. Rejections under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 1, 14 and 15 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement and as allegedly not being enabled. Since the Examiner indicated, however, that the amendments of the October 12, 2007 Amendment would be entered for purposes of appeal, the rejections under 35 U.S.C. § 112, first paragraph are now moot (see November 13, 2007 Advisory Action).

II. Rejections under 35 U.S.C. § 102(e) in view of U.S. Patent No. 7,073,083 to Litwin Jr., et al. (“Litwin”)

The Examiner has rejected claims 1-4, 9-12, 14 and 15 under 35 U.S.C. § 102(e) as allegedly being anticipated by Litwin.

A. Claim 1

Appellant submits that claim 1 is patentable over the cited reference. For example, claim 1 recites, “providing a first radio link between the radio transmitter and the radio receiver for transmitting safety related information data; and providing a second radio link between the radio transmitter and the radio receiver for transmitting non-safety related information data.”

The Examiner maintains that Litwin discloses the above features. In particular, the Examiner maintains that channels 106 and 108 of Figure 1 disclose the claimed first and second radio links. Appellant submits, however, that channel 106 is the only channel that actually transmits a type of information “data.” For example, as set forth, the devices 102 each may transmit or receive data via the data channel 106 (col. 2, lines 34-36). On the other hand, the

channel 108 is merely used to permit or authorize the devices 102 to transmit the data (col. 2, lines 36-41). If congestion arises due to a malfunctioning device 102, one or more of the devices 102 is shut down by an emergency shutdown signal transmitted via the channel 108 (col. 2, lines 52-57). Thus, the channel 106 is used for transmission of actual data, while the channel 108 is merely used for control/command purposes. Accordingly, Litwin fails to teach or suggest the claimed first and second link.

In the November 13, 2007 Advisory Action, the Examiner refers to column 3, lines 55-57 of Litwin and again maintains that channel 108 transmits information data. As set forth, however, the signal is disclosed as containing the command to shut down a device along with the network address of the device 102 to which the signal must be transmitted. Appellant submits that the shutdown command and the address to which the command must be transmitted fail to teach or suggest the claimed transmission of safety-related information data (i.e., the network address is not information “data”).

Furthermore, claim 1 recites, “wherein the first radio link and the second radio link are two physical channels that contemporaneously transmit the information data in parallel.”

As set forth above, the channel 108 of Litwin is merely used for transmittance of control commands or for authorization purposes. There is no teaching or suggestion, in Litwin, of channels 106 and 108 actually transmitting “data” in parallel “contemporaneously,” as recited in claim 1. In the November 13, 2007 Advisory Action, the Examiner refers to Figure 3 and column 5, lines 40-45 and 48-51 of Litwin as disclosing the contemporaneous transmission of information data in parallel. The cited portion, however, fails to disclose any

“contemporaneous” transmission of data in parallel. Rather, the cited portion of Litwin merely indicates that if the master device determines a malfunctioning slave device, i.e., a device that transmits data over data channel 106 after its time slot has expired, the master device transmits the command signal to shut down the slave device.

At least based on the foregoing, Appellant submits that claim 1 is patentable over the cited reference.

B. Claims 2-4 and 9-12

Since claims 2-4 and 9-12 are dependent upon claim 1, Appellant submits that such claims are patentable at least by virtue of their dependency.

C. Claims 14 and 15

Since claims 14 and 15 contain features that are analogous to the features discussed above for claim 1, Appellant submits that such claims are patentable for at least analogous reasons as claim 1.

III. Rejections under 35 U.S.C. § 103(a) in view of Litwin and U.S. Patent No. 6,893,395 to Kraus et al. (“Kraus”)

The Examiner has rejected claims 5-8 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Litwin in view of Kraus. However, since claims 5-8 are dependent upon claim 1, and Kraus fails to cure the deficient teachings of Litwin, in regard to claim 1, Appellant submits that claims 5-8 are patentable at least by virtue of their dependency.

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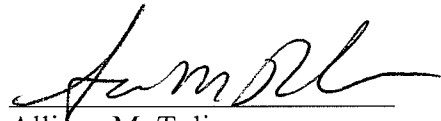
IV. Rejection under 35 U.S.C. § 103(a) in view of Litwin and U.S. Patent No. 7,103,344 to Menard ("Menard")

The Examiner has rejected claim 13 under 35 U.S.C. § 103(a) in view of Litwin and Menard. However, since claim 13 is dependent upon claim 1, and Menard fails to cure the deficient teachings of Litwin, in regard to claim 1, Appellant submits that claim 13 is patentable at least by virtue of its dependency.

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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CLAIMS APPENDIX

CLAIMS 1-15 ON APPEAL:

1. (rejected): A method for transmitting information data between a mobile radio transmitter and a radio receiver of a machine or plant, comprising:

 providing a first radio link between the radio transmitter and the radio receiver for transmitting safety related information data; and

 providing a second radio link between the radio transmitter and the radio receiver for transmitting non-safety related information data;

 wherein the first radio link and the second radio link are two physical channels that contemporaneously transmit the information data in parallel.
2. (rejected): The method as claimed in Claim 1, wherein the first and the second radio link are set up and operated concurrently.
3. (rejected): The method as claimed in Claim 1, wherein the first radio link is operated with a maximum packet life.
4. (rejected): The method as claimed in Claim 3, wherein the first radio link is operated synchronously with a maximum packet life.

5. (rejected): The method as claimed in Claim 1, further comprising using the first radio link to transmit duplicates of the safety related information.

6. (rejected): The method as claimed in Claim 5, wherein a predefined number of the duplicates is transmitted.

7. (rejected): The method as claimed in Claim 5, wherein the duplicates of the safety related information are transmitted until new safety related information is available.

8. (rejected): The method as claimed in Claim 5, wherein the duplicates of the safety related information are transmitted until the transmitted information has been correctly received.

9. (rejected): The method as claimed in Claim 1, wherein the first and the second radio links are set up via a single radio system.

10. (rejected): The method as claimed in Claim 1, wherein safety related information is transmitted via an SCO link of a radio system using a Bluetooth standard.

11. (rejected): The method as claimed in Claim 1, wherein non-safety related information is transmitted via an ACL link of a radio system using the Bluetooth standard.

12. (rejected): The method as claimed in Claim 10, wherein non-safety related information is transmitted via the ACL link of a radio system using the Bluetooth standard.

13. (rejected): The method as claimed in Claim 12, wherein information is transmitted via a single radio system using the Bluetooth standard.

14. (rejected): A radio transmitter configured to transmit data to a radio receiver of a machine or plant, comprising:

a first radio link for transmitting safety related information; and

a second radio link for transmitting non-safety related information,

wherein the first radio link and the second radio link are two physical channels that contemporaneously transmit the information data in parallel.

15. (rejected): A radio receiver of a machine or plant, configured to receive data from a radio transmitter, comprising:

a first radio link for receiving safety related information; and

a second radio link for receiving non-safety related information,

wherein the first radio link and the second radio link are two physical channels that contemporaneously transmit the information data in parallel.

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EVIDENCE APPENDIX:

None

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RELATED PROCEEDINGS APPENDIX

None